

# BakerHostetler

Baker&Hostetler LLP

Washington Square, Suite 1100  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036-5403

T 202.861.1500  
F 202.861.1783  
www.bakerlaw.com

Erika K. Thomas  
direct dial: 202.861.1675  
ekthomas@bakerlaw.com

October 5, 2023

## VIA ECF

Honorable John P. Mastando III  
United States Bankruptcy Court  
Southern District of New York  
One Bowling Green  
New York, New York 10004-1408

Re: *Picard v. Fairfield Greenwich Group*, Adv. Pro. No. 10-03800 (JPM)

Dear Judge Mastando:

We represent Irving H. Picard, the trustee (“Trustee”) for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the substantively consolidated estate of Bernard L. Madoff in the above-referenced adversary proceeding. We also represent the Trustee in a case which involves substantially the same parties and arises out of the same events and operative facts, *Picard v. Fairfield Investment Fund Ltd., et al.*, Adv. Pro. No. 09-01239 (CGM) (the “SIPA Action”, and together with this action, the “Fairfield Actions”).<sup>1</sup>

For the reasons below, we respectfully request that the Court schedule a conference as soon as practicable on the Trustee’s request to extend the discovery deadlines by one year as provided in the enclosed Proposed Case Management Order (“Proposed Order”). Although the parties agreed in May 2022 to extend the discovery deadlines in the Fairfield Actions on consent, this is the first request to the Court for an extension of discovery deadlines. Pursuant to Local Rule 7007-1 and to the extent Your Honor requires additional background concerning this request, attached is a declaration certifying that the Trustee conferred with counsel for the defendants (“Defendants”), and that the Defendants have declined to consent to the requested extension. The declaration also contains additional information concerning the status of discovery in this case.

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<sup>1</sup> Pursuant to the applicable stipulated case management orders, the Fairfield Actions have coordinated discovery deadlines and procedures, and documents produced in one action are deemed produced in the other. For this reason, a corresponding request for extension of discovery deadlines and proposed order have also been submitted to the Honorable Cecelia G. Morris with respect to the SIPA Action.

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## **I. Case Background**

This action consists of common law claims against the Defendants, assigned to the Trustee by the Liquidators of Fairfield Sentry, Fairfield Sigma, and Fairfield Lambda, and a counterclaim by Defendant Fairfield Greenwich Bermuda against Fairfield Sentry. In February 2019, the Trustee filed his Second Amended Complaint. ECF 90-1. On April 8, 2021, the Court issued an order Granting in Part and Denying in Part Defendants' Motion to Dismiss. ECF 162. The Court entered a Stipulated Case Management Order on August 2, 2021, ECF 174, and a Stipulated Amended Case Management Order (the "CMO") on May 17, 2022. ECF 179. This case was reassigned to Your Honor on June 29, 2023. ECF 191. Currently, fact discovery is set to close in the Fairfield Actions on November 22, 2023.

## **II. There is Good Cause for the Requested Extension**

Pursuant to paragraph 13 of the CMO, requests for modification of deadlines must be made to this Court, and the Court can grant requests upon a showing of "good cause."<sup>2</sup> In this case, the parties have been actively engaged in discovery since June 2021 and the Defendants continue to identify and produce documents responsive to the Trustee's requests. The parties recently reached agreement on search terms intended to identify documents responsive to the Trustee's Second Request to the Defendants for the Production of Documents, which were served in July 2023. However, as of this date, documents have yet to be produced in response to the Second Request for Production. Counsel for the Trustee and the Defendants have met and conferred regarding the request for a one-year extension of discovery deadlines, and despite agreement in principal on certain issues, have been unable to reach agreement concerning the requested extension of deadlines.

The Trustee's receipt and analysis of documents which have either only recently been produced by the Defendants or which still remain outstanding will enable the Trustee to better determine the extent to which development of facts through depositions is required. The anticipated consensual resolution by the parties of issues relating to the admissibility of prior testimony, alternate means of obtaining Rule 30(b)(6) testimony, and authentication of records, will also inform the scope of the Trustee's remaining discovery efforts and ultimately serve to mitigate discovery-related costs.

Accordingly, there is good cause for extending the discovery deadlines and the Trustee respectfully requests that the Court schedule a conference on the Trustee's application for a one-year extension of the discovery deadlines in accordance with the Proposed Order.

Respectfully submitted,

/s/ Erika Thomas

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<sup>2</sup> See also Fed. R. Civ. P. 16(b)(4) (as incorporated by Fed. R. Bankr. P. 7016) ("A schedule may be modified only for good cause and with the judge's consent.").

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Erika Thomas

Cc: Peter Kazanoff, Esq. ([pkazanoff@stblaw.com](mailto:pkazanoff@stblaw.com))  
Sara Ricciardi, Esq. ([sricciardi@stblaw.com](mailto:sricciardi@stblaw.com))  
Jared Meyer, Esq. ([jared.meyer@stblaw.com](mailto:jared.meyer@stblaw.com))  
Kelsey Vickery, Esq. ([kelsey.vickery@stblaw.com](mailto:kelsey.vickery@stblaw.com))  
George Wang, Esq. ([gwang@stblaw.com](mailto:gwang@stblaw.com))  
Daniel J. Fetterman ([dfetterman@kasowitz.com](mailto:dfetterman@kasowitz.com))  
Andrew W. Hammond ([ahammond@whitecase.com](mailto:ahammond@whitecase.com))  
Andrew J. Levander ([andrew.levander@dechert.com](mailto:andrew.levander@dechert.com))  
Neil A. Steiner ([neil.steiner@dechert.com](mailto:neil.steiner@dechert.com))  
David J. Molton ([dmolton@brownrudnick.com](mailto:dmolton@brownrudnick.com))  
Cameron Moxley ([cmoxley@brownrudnick.com](mailto:cmoxley@brownrudnick.com))  
Marek P Krzyzowski ([mkrzyzowski@brownrudnick.com](mailto:mkrzyzowski@brownrudnick.com))